

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
KNOXVILLE, FEBRUARY 1997 SESSION

FILED

July 1, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

CLARK VANN LUNSFORD,

Plaintiff/Appellee

v.

SHAW INDUSTRIES, INC.,

Defendant/Appellant

HAMILTON CHANCERY

Hon. Howell N. Peoples,
Chancellor

NO. 03S01-9607-CH-00078

For the Appellant

C. Douglas Dooley
D. Scott Bennett
Third Floor, Pioneer Bank Bldg.
Chattanooga, TN 37402

For the Appellee:

David E. Harrison
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633 Chestnut Street
Chattanooga, TN 37450

MEMORANDUM OPINION

Members of Panel:

E. Riley Anderson, Justice
John K. Byers, Senior Judge
Roger E. Thayer, Special Judge

**REVERSED
AND REMANDED**

THAYER, Special Judge

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

The issue in this case involves the enforcement of payment of post-trial medical expenses. The trial court found the employer, Shaw Industries, Inc., in contempt for unreasonable delay in paying post-judgment medical expenses. The only sanction the court imposed was an award of attorney's fees to the employee, Clark Vann Lunsford, as the hearing revealed the medical expenses originally in dispute were paid shortly prior to the hearing.

The parties originally settled the workers' compensation claim by entry of an order on November 3, 1994, which provided for an award based on 40% permanent partial disability to the body as a whole. The order then provided the employer would pay "reasonable and necessary medical expenses for which it is liable to date and in the future."

A petition for contempt was filed on October 1, 1995, alleging that during March, 1995, the employee was hospitalized in Bozeman, Montana and incurred medical expenses in the amount of \$5,452.30 and that the employer's refusal to pay these expenses was a violation of the court's order.

After a hearing on this issue, the Chancellor found there had been an unreasonable delay in paying the expenses and the delay violated the final judgment. The record indicates that a hearing had not been conducted prior to the contempt hearing to determine whether the medical expenses were the responsibility of the employer.

On appeal the employer insists the employee should have filed a motion or petition requesting the court to determine whether the medical expenses were causally related to the compensable injury and obtained an order directing the payment of the expenses before it would be proper to file a petition for contempt for failure to pay the expenses.

In response to this contention, the employee contends the court's order did

not provide or require the employee to obtain judicial approval every time he incurred medical expenses and that the circumstances of the case (in incurring the expenses) constituted an emergency.

Since the main issue in the case involves a procedural question, we do not find it necessary to give a detailed statement of the facts. It is sufficient to state that during March, 1995, employee Lunsford was in Montana by reason of his employment and while there engaged in skiing activities for several days; the following day he began to experience some pain and stiffness in his back; the next evening he awakened with intense pain in his legs; and he spent several days in a hospital because of these complaints. The employer's insurance carrier initially determined the expenses were caused by the skiing activities and denied the claim for expenses. Payment of the expenses occurred shortly prior to the hearing on March 29, 1996, and the trial court found there was no reasonable explanation for the one year delay in making payment.

The case is to be reviewed on appeal *de novo* accompanied by a presumption of the correctness of the findings of fact unless the preponderance of the evidence is otherwise. T.C.A. § 50-6-225(e)(2).

However, the *de novo* review does not carry a presumption of correctness to a trial court's conclusions of law but is confined to factual findings. *Union Carbide v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993).

We first note that a provision in a final judgment imposing liability on the employer for payment of future medical expenses does not result in the strict sense of requiring the payment of any and all expenses. Neither does the statutory language of T.C.A. § 50-6-204. The employer is protected against unreasonable and unnecessary future medical charges by the requirement that the employee must show a direct causal relationship between the need for medical treatment and the employee's on the job injury. *U.S. Fidelity & Guar. Co. v. Morgan*, 795 S.W.2d 653, 656 (Tenn. 1990). The emergency circumstances of the case would not alter these rules but would have an effect on the general requirement that the employer be given the opportunity to provide the treatment each time the employee reasonably requires

additional treatment. *Greenlee v. Care Inn of Jefferson City*, 644 S.W.2d 679, 680 (Tenn. 1983).

A petition for contempt is generally the proper remedy to enforce the provisions of a final judgment against a party who is in willful disobedience to the judgment or decree. T.C.A. § 29-9-102(3).

However, we do not see how a party to a final judgment could be held in contempt in a case of this nature where there has been no determination by the court that the medical expenses are causally related to the on-the-job injury and where the employer has not been specifically ordered to pay the expenses at issue. Under these circumstances, we are of the opinion the filing of a contempt petition was not the proper remedy and that the employee should have filed a motion or petition seeking a judicial determination as to the responsibility of the parties concerning the post-judgment medical expenses in question. When legal responsibility has been determined and the employer is specifically ordered to pay and fails to do so, then the remedy for such failure to comply with the provisions of an order or a judgment would be the contempt procedure.

Since the post-judgment medical expenses were unknown and not ascertainable upon the entry of the final judgment, we find the employer was not in violation of a provision in the judgment when the contempt petition was filed. The finding of contempt is reversed and the award of attorney's fees is vacated.

The case is remanded to the Chancery court for such other proceedings as may be necessary. Costs of the appeal are taxed to plaintiff-employee.

Roger E. Thayer, Special Judge

CONCUR:

E. Riley Anderson, Justice

John K. Byers, Senior Judge

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

CLARK VANN LUNSFORD,)
)Hamilton Chancery No. 74104
Plaintiff-Appellee,)
)Hon. Howell N. Peoples,
)Chancellor
)
V.)No. 03S01-9607-CH-00078
)
)
SHAW INDUSTRIES, INC.,)
)
Defendant-Appellant.)REVERSED AND REMANDED.

JUDGMENT ORDER

This case is before the Court upon motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the motion for review is not well taken and should be denied; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by plaintiff-appellee, for which execution may issue if necessary.

IT IS SO ORDERED this ___ day of June, 1997.

PER CURIAM

Anderson, J. - Not participating.